

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Office of the Commissioner


TO: Distribution

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TELEPHONE NO: 465-3901

TEXT TELEPHONE: 465-3652

FAX NUMBER: 586-8365


FROM: Leo von Scheben, P.E., L.S., M.B.A.
Commissioner

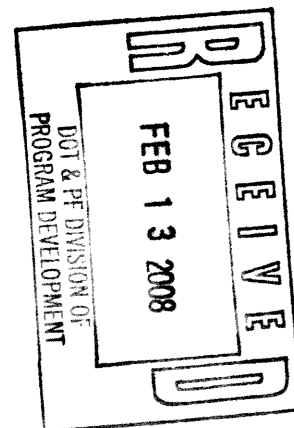
SUBJECT: Department Limited
English Proficiency Plan

Attached you will find the department's Limited English Proficiency Plan developed to comply with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" and recent guidance issued by the US Department of Transportation. The department's Civil Rights Office staff developed this plan in cooperation with staff from all three regions and reflects their input.

Please distribute this plan throughout your organization. A draft policy and procedure will follow shortly explaining steps to be taken by departmental staff to implement this plan. If you have any questions about this plan, please contact Jon Dunham, Civil Rights Manager, at 269-0850.

Attachment

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cc: Mark O'Brien, Chief Contracts Officer
Jon Dunham, Civil Rights Manager



State of Alaska

**Alaska Department of Transportation
& Public Facilities**

Limited English Proficiency Plan

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Definition of Terms

1. **Alaska Department of Transportation/Public Facilities (ADOT&PF).** The department of the State of Alaska responsible for the transportation systems and public facilities under acquisition, under construction, or owned by the State of Alaska, and the primary recipient of Federal Highway Administration (FHWA) funds in the State of Alaska as well as recipient of Federal Aviation Administration (FAA) and Federal Transit Administration (FTA) funds.
2. **Alaska Marine Highway System (AMHS).** A modal section of the ADOT&PF that administers and operates the State ferry system.
3. **American Community Survey.** A project of the U.S. Census Bureau that replaces the long form in the decennial census. It is an ongoing statistical survey, and thus more current than information obtained by the long form.
4. **Contracting Officer.** Officials designated in ADOT&PF's Policy and Procedure 10-0017, Delegation of Authority, to serve as the Commissioner's representative and who have been given authority to sign contracts and make contracting decisions on the Commissioner's behalf.
5. **Civil Rights Office (CRO).** The office of ADOT&PF responsible for implementing, administering, and monitoring ADOT&PF's external affirmative action and civil rights programs mandated by the United States Department of Transportation (USDOT) which include External Equal Employment Opportunity (ExEEO), the Disadvantaged Business Enterprise (DBE) Program and related Supportive Services, Training Special Provisions (also known as On the Job Training (OJT)) and related Support Services, Title VI, and Contract Compliance.
6. **Executive Order 13166.** "Improving Access to Services for Persons with Limited English Proficiency." On August 11, 2000, the President signed this Executive Order which requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.
7. **Federal Aviation Administration (FAA).** A branch of U.S. Department of Transportation (US DOT) responsible for administering the nation's air transportation system.
8. **Federal Highway Administration (FHWA).** A branch of the US DOT responsible for administering the nation's highway system.

9. **Federal Transit Administration (FTA).** A branch of US DOT responsible for administering the nation's mass transit systems.
10. **Interpreter.** Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language).
11. **Language Center.** A center that serves as a clearinghouse to (1) offer training for interpreters to develop interpreting skills and professional ethics; (2) devise a statewide roster of trained interpreters; (3) develop interpreter testing to prepare interpreters for certification; and (4) offer training for groups and agencies on the roles, responsibilities, and professional ethics expected of qualified interpreters.
12. **Limited English Proficiency (LEP).** Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP." These individuals may be entitled language assistance with respect to a particular type or service, benefit, or encounter.
13. **Program Areas.** Functional sections within ADOT&PF, e.g.: National Highway Institute Administration and Technology Transfer; Pre-Construction (Planning, Preliminary Design, Environmental, Final Design, Right-of-Way (ROW); Contracting (PSA); Construction, Research; Alaska Marine Highway System, Facilities/Utilities and Leasing and Property Management.
14. **Regions (Northern, Southeast and Central).** The three regional sections of ADOT&PF delineated by geographic boundaries, each containing all the Program Areas (as listed above), and together covering the entire State.
15. **Safe Harbor Standard.** A "safe harbor" means that a recipient provides written translations under the following circumstances: (a) provides written translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or (b) If there are fewer than 50 persons in a language group that reaches the 5% trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost. These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

16. **Sub-recipients.** Local governing bodies--this may be cities, municipalities, boroughs, tribal governments or entities such as universities or private firms (contractors and consultants are not included) --that receive 'pass-through' FHWA and FTA funds from ADOT&PF. These governing bodies and/or entities have full control of project funds and ultimate responsibility for the outcome of the planned project.
17. **Title VI of the Civil Rights Act of 1964.** This federal law mandates that no person shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADOT&PF receives federal assistance from the U.S. Department of Transportation, including FHWA, FAA and FTA.
18. **Title VI Specialist.** An employee of the Civil Rights Office who is responsible for coordinating, monitoring, training, and reporting on Title VI program requirements within ADOT&PF. The program encompasses the Title VI Civil Rights Act of 1964 and all other non-discrimination related statutes pertaining to gender, age and disability and environmental justice.
19. **Translation.** Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

Introduction

Authority

Executive Order (EO) 13166 - Improving Access to Services for Persons with Limited English Proficiency (LEP), August 2000 directs the implementation of the protections afforded by Title VI of the Civil Rights Act of 1964 and related regulations. Accordingly, it prohibits recipients of Federal financial assistance from discriminating based on national origin by failing to provide meaningful access to services to individuals who are LEP. This protection provides LEP persons an equal opportunity to benefit from or have access to services that are normally provided in English.

LEP Defined

Limited English Proficiency is a term used to describe individuals who are not proficient in the English language. According to the 2000 U.S. Census, among limited English speakers in Alaska, Spanish is the language most frequently spoken, followed by Yupik, Inupiaq, Tagalog, Ukrainian, Hmong, Russian and Korean. About 37% of Alaskans who speak foreign languages speak English less than "very well," according to the 2000 Census. That percentage translates into approximately 24,700 adults in Alaska in that category. With regard to limited English speakers in Alaska, that equates to roughly 50,075 Alaskans.

LEP and ADOT&PF

There are two federal authorities, Title VI of the Civil Rights Act of 1964 and the Presidential Executive Order (EO) 13166, Improving Access to Services for Persons with Limited English Proficiency, that require the ADOT&PF to provide LEP persons with meaningful access to programs, activities and services. To fully implement Title VI and EO 13166, the US DOT published guidance to its recipients of federal assistance on December 14, 2005 in the Federal Register.

LEP Criteria – The Four Factor Analysis

How Does ADOT&PF Determine the Extent of Its Obligation to Provide LEP Services?

ADOT&PF is required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

- (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee

- (2) The frequency with which LEP individuals come in contact with the program
- (3) The nature and importance of the program, activity, or service provided by the recipient to people's lives
- (4) The resources available to the recipient and costs.

Costs must be factored into this balancing test as part of the consideration of "resources available". "Reasonable steps" may cease to be reasonable when the costs imposed substantially exceed the benefits in LEP Guidance provided by the U.S. Department of Justice (DOJ).

Responsibilities

The guidance on EO 13166 directs recipients of Federal financial assistance to take reasonable steps to provide LEP individuals with meaningful access to their programs, activities and services. For the purpose of this plan, the following recipients are subject to compliance under Title VI and the EO:

Pre-Construction (Planning, Design (preliminary and final), Environmental, Right-of-Way), Construction, Contracts, Maintenance and Operations, Research and Technology Transfer, Alaska Marine Highway System (AMHS), airports, Metropolitan Planning Organizations (MPOs), sub-recipients and public transit systems that are sub-recipients in Alaska.

Based on this guidance, ADOT&PF will:

- Assess and address the needs of eligible persons
- Take reasonable steps (based on the four factor analysis) or ensure that responsible steps are taken to ensure meaningful access
- Develop and implement monitoring control mechanisms to ensure delivery of service and ongoing compliance
- Ensure compliance, monitoring, and oversight
- Provide technical assistance and guidance
- Report accomplishments and goals

The CRO will:

- Ensure compliance, monitoring, and oversight; and
- Provide technical assistance and guidance.

Compliance and Enforcement

ADOT&PF is responsible for ensuring that meaningful services to LEP persons are provided in their respective areas of responsibility. Meaningful service represents a balance between identified public needs and department resources. Additionally, the Title VI Specialist will continuously monitor ADOT&PF programs and activities to ensure

LEP requirements are fulfilled and report annual accomplishments and upcoming goals relating to LEP activities.

In determining whether LEP compliance is met, the Civil Rights Title VI Specialist will assess, by way of program evaluations, whether the ADOT&PF procedures allow LEP persons to overcome language barriers and participate in a meaningful way in the recipient's programs, activities and services based on documentation provided by program areas sub-recipients. ADOT&PF's appropriate use of methods and options detailed in this LEP Plan, including analysis and documentation, will be viewed as evidence of intent to comply with LEP requirements and Title VI of the Civil Rights Act of 1964.

Technical Assistance

The Civil Rights Office is responsible for providing technical assistance. This includes advising ADOT&PF staff, MPOs and sub-recipients of LEP requirements.

Providing Meaningful Access

The key to providing meaningful access for LEP persons is to ensure effective communication exists between the service provider/recipient and the LEP person. To accomplish effective communication, the CRO, with the assistance of project staff, will take the following actions:

1. Perform a needs assessment
2. Provide for oral language assistance
3. Notify LEP populations of the availability of language assistance services
4. Translate vital documents in languages other than English
5. Training
6. Develop written procedures
7. Monitor and evaluate access to language assistance

1. Perform a needs assessment

The CRO will assess language assistance needs of those impacted by a project by identifying and/or accomplishing the following:

- Every three to five years, identify languages likely to be encountered and the number of LEP persons in the eligible population (project area) likely to be directly affected;
- Making contact with the public where language assistance is needed beginning at the project planning stage;
- Resources needed to provide effective language assistance, including location, availability and arrangements necessary for timely use.

2. Provide for oral language assistance

Providing LEP persons with oral language assistance through a language center when requested and as resources are available as appropriate. Such assistance may take the form of bilingual staff, contracting with a professional interpreter service or the use of volunteer community interpreters who are **skilled and competent** in interpreting. Employment of bilingual staff within ADOT&PF will be accomplished when it is practical and consistent with project goals. Collaboration between the CRO and a language center is a vital component of this assistance to provide professional interpreter service.

3. Notify LEP populations of availability of language assistance services

LEP persons have the right to language assistance, at no cost to them, in their spoken language. Project Managers, through their public involvement consultants and transit operators are responsible for informing the public of this right in accordance with US DOT Guidance 2005. Language identification cards or posting signs in public areas are methods that can be used to provide notice of the service.

4. Translation of vital documents in languages other than English

Vital documents will be provided in English to the general public and translated into languages that are regularly encountered, based on DOJ safe harbor standards by project staff in the project/service area.

Vital Documents are documents that convey information that critically affects the ability of the recipient/customer to make decisions about his/her participation in the program, activity or service. Examples of vital documents include but are not limited to: applications, public notices, consent forms, letters containing important information regarding participation in a program, eligibility rules, notices pertaining to the reduction, denial or termination of services or benefits, right to appeal, notices advising of the availability of language assistance and outreach and community education materials.

It is recommended that recipients and sub-recipients develop criteria for deciding which documents are vital thereby subject to translation. Translating documents for LEP to a fourth grade literacy level ensures the targeted audience understands the information. Community based organizations or focus groups can assist with testing translations for language and literacy level appropriateness.

5. Training

ADOT&PF, MPO and sub-recipient staff will be trained on policies and procedures of language assistance and how to determine whether a customer needs language assistance services is essential to bridging the gap between policies and actual practices. Training will include how to obtain language assistance services and communication with interpreters and translators. Because LEP persons can file a complaint on the basis of national origin discrimination, the CRO has staff trained on how to properly handle a Title VI complaint.

6. Develop written procedures

The CRO will provide guidance to ADOT&PF, MPO and sub-recipient staff through written policy and procedures that address the following:

- Identifying and assessing language needs
- Oral language assistance; including vendor charges for services, procedures on how to access and to request translation assistance
- Written translation of materials and publications
- Oral and written notification of the availability of language assistance
- Staff training on language service provision
- Monitoring access to language assistance

7. Monitor and evaluate access to language assistance

The CRO will monitor and evaluate accessibility and quality of language assistance needs of LEP persons to ensure LEP persons can meaningfully access programs and activities. The CRO staff will include in its annual Title VI update an annual assessment to determine:

- the current LEP composition of our service area
- the current communication needs of LEP persons
- whether existing assistance meets LEP needs
- whether Department staff is knowledgeable about policies and procedures and how to implement them
- whether sources of and arrangements for assistance are still current and viable.

Data Collection and Record Keeping

Part of the CRO's monitoring and compliance system will be data collection. Data collection will include, but are not limited to the following:

- Race of LEP person (voluntary)
- Ethnicity of LEP person (voluntary)
- Gender of LEP person
- Number in attendance at public meetings
- Primary language of the population in the project area
- Data upon which the recipient based language needs assessment
- Number of LEP persons, by language group, who received language services

Plan Approval Process

In order to fulfill the intent of USDOT guidance, the CRO developed this plan with the assistance and feedback of department staff. After the initial draft, a review process began which included a comment period followed by a teleconference. Those comments received by department staff and other sub-recipients were addressed during the teleconference and subsequently incorporated into the plan.

Guidance/Resources

The resources listed below will assist the CRO to implement LEP requirements and may be used in conjunction with this plan.

- Title VI of the Civil Rights Act of 1964
- Civil Rights Restoration Act of 1968
- Executive Order 13166 –Improving Access to Services for Persons with Limited English Proficiency, August 11, 2000
- The U.S. DOJ Policy Guidance, Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency, Federal Register/Vol. 65, No. 159/Wednesday, August 16, 2000
<http://www.usdoj.gov/crt/cor/>
- United States Census 2000 Language Identification Flashcard
- The U.S. Department of Transportation Guidance to Recipients on Special Language Services to Limited English Proficient Beneficiaries, Federal Register/Vol. 66, No. 14/Monday, January 22, 2001.
(Refer to the Civil Rights Title VI Program Resource Directory, Tab 29.)
- U.S. Department of Justice Clarifying Memorandum, dated October 26, 2001
http://www.usdoj.gov/crt/cor/lep/Oct26_BackgroundQ&A.htm
- The U.S. Department of Transportation Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons Federal Register / Vol. 70, No. 239 / Wednesday, December 14, 2005 / Notices
- How to Engage Low-Literacy and Limited English Populations in Transportation Decision Making – US Department of Transportation, Federal Highway Administration, March 2006